

**VILLAGE OF HINSDALE  
ZONING BOARD OF APPEALS  
MINUTES OF THE MEETING  
January 21, 2009**

**1. Call to Order**

Chairman Anglin called the regularly scheduled meeting of the Zoning Board of Appeals to order on Wednesday, January 21, 2009 at 7:34 p.m. in Memorial Hall of the Memorial Building, 19 E. Chicago Avenue, Hinsdale, Illinois.

**2. Roll Call**

Present: Chairman Paul V. Anglin, Members William Haarlow, John Callahan, John Richter, Marc Connelly and Bob Saigh

Absent: Member Kim Angelo

Also Present: Village Manager Dave Cook, Village Attorneys Steve Ruffalo and Ken Florey, Building Commissioner Robb McGinnis, Staff Secretary Christine Bruton, Court Reporter Kathy Bono

**3. Approval of Minutes**

**December 17, 2008**

Member Richter moved **Approval of the Minutes from the Regular Meeting of December 17, 2008**. Member Saigh seconded the motion.

**AYES:** Members Richter, Connelly, Saigh, Chairman Anglin

**ABSTAIN:** Members Callahan and Haarlow

**NAYS:** None

**ABSENT:** Member Angelo

Motion carried.

**November 19, 2008**

Chairman Anglin made note of a change to the third page of the draft minutes. Member Callahan moved **Approval of the Minutes from the Regular Meeting of November 19, 2008, as amended**. Member Richter seconded the motion.

**AYES:** Members Callahan, Richter, Connelly, Saigh, Chairman Anglin

**ABSTAIN:** Member Haarlow

**NAYS:** None

**ABSENT:** Member Angelo

Motion carried.

**4. Receipt of Appearances - None**

**5. Receipt of Requests, Motions, Pleadings, or Requests to make Public Comment of a General Nature - None**

**6. Pre-Hearing and Agenda Setting - None**

**7. Public Hearings**

a) **522 Hickory Street, V-10-08** (transcript on file)

Attorney Matthew Klein addressed the Board on behalf of the homeowner, Mr. Steve Cochlan, also present. Mr. Klein made note of the air conditioners on the east side of the house and provided a photo that illustrates that they, and the generator, are screened from the neighbor's view. This was the logical place to locate a backup generator, he said. When the Village did the final inspection of major work on the house, the generator was cited as being in a non-conforming location. He asked the Board to take note of the unreliable electric service in Hinsdale, and that when the home was being constructed there were no regulations on the location of generators; regulation came after construction had begun. The generator was located at preconstruction and never moved. Previously submitted material indicates what the generator looks like. Mr. Klein pointed out that the home backs up to Monroe school, is a legal non-conforming lot of record and is a smaller lot than required in the R-2 zoning district. The backup generator itself is relatively small, makes very little noise, and operates only in a power outage emergency and 15 minutes per week to ensure continued operation, he said. It is located behind a significant vegetation screen and cannot be seen from the home to the east. Additionally, it was located in this spot to be close to the electrical panel in the basement, he noted. It was not located to the back of the property so as to keep the back yard as usable as possible, he said.

Mr. Cochlan addressed the Board and summarized as follows:

1. This is an extraordinarily small lot and they want to maintain as much usable space in the back yard as possible for their children to play.
2. They are trying to be a good neighbor and have paid for water issues caused by Monroe school, which further impact the usability of the back yard.
3. The generator doesn't bother anyone; the next door neighbor was present to attest to that, although she did not directly address the Board herself.

Responding to questions from members of the Board, Mr. Cochlan stated

that there has not been a power outage since last June, and that his request for a variance is not a self-created hardship because of power unreliability, the small size of his yard and reduced use of the yard because of piping installed for drainage, all of which are factors beyond his control and impact his situation.

There being no further questions from the Board, Chairman Anglin closed the hearing. He stated the Board would deliberate after the second public hearing. Member Haarlow recommended that they deliberate at this point in the event that the next hearing takes a lot of time. All agreed.

#### DELIBERATION ON V-10-08, 522 HICKORY STREET

There being no additional questions or comments from the Board, Chairman Anglin asked for a motion. Member Callahan moved to **approve the variation as requested for 522 Hickory Street**. Member Connelly seconded the motion.

**AYES:** Member Callahan

**ABSENT:** Member Angelo

**NAYS:** Members Haarlow, Richter, Connelly, Saigh and Chairman Anglin

Motion denied.

b) **540 W. Ogden Avenue, APP-03-08** (transcript on file)

Chairman Anglin opened the public hearing and reminded all present that this appeal concerns the August 5<sup>th</sup> letter of the Village Manager only. This is not a judicial hearing, it is an administrative hearing. The Board is bound by the current Village zoning code and the ZBA will only make a determination on Mr. Cook's decision.

Attorney Mark Daniel, Ms. Perez, Mr. Horne and their insurance counsel, Mr. Landis, were present. Chairman Anglin asked Mr. Daniel about the fee issue. Mr. Daniel replied that there are two questions to consider, the first is the applicability of the zoning ordinance. Chairman Anglin stated that the zoning ordinance is not a question for this Board. They can only use the current zoning code. There are other avenues available to challenge the code. Mr. Daniel disagreed and insisted that the current code is void. Chairman Anglin said the ZBA will not make a determination on that subject.

Regarding the monies the Village has requested of the applicant, Mr. Daniel gave Village Attorney Florey copies of a letter for the ZBA and asked that it be distributed. Mr. Florey stated we would need a motion to put the letter into the record. Attorney Ruffalo asked that we not reopen this matter; he doesn't want to brief this. If the petition doesn't tender the check, postpone the hearing. Chairman Anglin upheld Mr. Ruffalo's objection, payment must be received before proceeding. Mr. Daniel asked for a motion to overrule the ruling of chair, there was none forthcoming. Mr. Daniel would like to have the letter included in the record and will submit the check under protest, as he believes the fees requested are punitive. A check in the amount of \$56,527.23 and notice of payment under protest were given to Staff Secretary Bruton. Discussion followed regarding the escrow deposit and various other points of law.

Mr. Daniel referenced the errata he submitted to the transcript of the November public hearing. Chairman Anglin stated that he took issue with some of the characterization of the errata. Mr. Ruffalo said this is more than the normal course of an errata; a video tape exists if there is uncertainty. Further, he stated that the errata is highly improper and should be denied. Mr. Daniel said he reviewed the video recording twice with the transcript and his secretary confirmed his work. Chairman Anglin ruled to disallow the errata, the submission is denied. Mr. Daniel asked for a motion to override the decision of the Chair, none was forthcoming. Chairman Anglin asked if there were any questions from the Board, there being none, he closed the hearing.

#### DELIBERATION ON APP-03-08, 540 W. OGDEN AVENUE

Chairman Anglin reminded the Board that many items set forth in the petition are beyond the scope of what the ZBA can deal with. He cautioned the Board to reserve discussion only to the issue of Mr. Cook's letter of August 5. Member Haarlow confirmed he reviewed the transcript and the minutes of the November meeting. Chairman Anglin asked for further discussion. There being none he asked for a motion. There was no motion from the Board. He asked if the Board wanted to defer a decision to the next meeting to review all material. Attorney Florey cautioned the Board that a decision must be made within 30 days of closing the hearing. Mr. Daniel objected to the village attorney directing a memorandum of law to the Board. Chairman Anglin read from the Zoning Code that failure to decide a case within 30 days is deemed a denial per §11-502 (d)4) and agrees that no more memoranda is necessary. Mr. Florey noted that deliberations may be done in closed session. Member Connelly made a motion **to affirm the decision of the**

**Village Manager in the matter of APP-03-08.** Member Callahan seconded the motion.

**AYES:** Members Haarlow, Callahan, Connelly, Saigh, Chairman Anglin

**NAYS:** Member Richter

**ABSENT:** Member Angelo

Motion carried.

**8. New Business**

**None**

**9. Unfinished Business**

**None**

**10. Adjournment**

With no further business coming before the Zoning Board of Appeals, Member Richter made a motion to adjourn. Member Saigh seconded the motion. Voice vote taken, all in favor, motion carried.

Chairman Anglin declared the meeting adjourned at 8:26 p.m.

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Christine M. Bruton  
ZBA Staff Secretary

Approved: \_\_\_\_\_